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EXAMINER

CHOWDHURY, SUMAIYA A

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---|--|--|
| Office Action Summary | Application No. 10/675,466 | Applicant(s) KARAOGUZ ET AL. | |
| | Examiner SUMAIYA A. CHOWDHURY | Art Unit 2421 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/9/09 have been fully considered but they are not persuasive.

(a) Applicant argues "Notably, the Office Action does not indicate that a user designates the "control center 130" [which the Office Action cites as a monitoring system] of Khushiem....there is nothing in Khushiem that indicates that a user designates the control center 130", on page 12 of the Remarks.

In paragraph [0113], Khushiem discloses "Depending on privacy concerns, the CPE may or may not send back user profile information to control center 130." Hence, if the user is a very private person, and does not want to share any information, none of the profile information will be sent back to control center 130. The control center 130 is user designated in the sense that since the user has control over whether profile information will be sent or not, the control center is user designated. By designating whether or not the control center 130 should receive profile information, the user is designating the control center 130. If the user had no control over this, and the system would automatically transmit the profile information, the control center 130 would not be user designated.

(b) Applicant argues that McGowan does not teach the automatic selection of media. Applicant goes on to argue the use of a "drag and drop methodology" is not equivalent to "automatic selection".

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McGowan explicitly states a software program automatically selecting programs to be suggested for use in scheduling where a user via user interface may then automatically fill in the scheduling with selected suggested programs ([0034]-[0035]), it is noted that while McGowan teaches a user interacting with software programming used for automatic program selection based on statistics and scheduling. McGowan teaches Artificial Intelligence rules are implemented in selecting content. Fuzzy clustering techniques, and pattern recognition routines are implemented to isolate key trends and findings. In other words, content is automatically selected for consumption by the user. The subsequent step is scheduling the selected content, which is performed by a human operator using software. One scenario which can be construed from this teaching is that by executing the AI software, programs X, Y, and Z are selected. The human operator determines that all of X, Y, and Z should be scheduled, and as a result uses the drag-and-drop software to schedule the X, Y, and Z programming. Hence, contrary to Applicant's statement, the additional media is automatically selected.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-2, 5-10, 13-15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim(s) 1-2, 5-10, 13-15 and 16 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled “Clarification of ‘Processes’ under 35 U.S.C. 101”). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

For example, claim 1 could conceivably be interpreted to mean that a first person (monitoring system) receives a notification on paper via a network of individuals a request for data, the request comprising parameters. The first person calculates a statistic related to the request and then selects additional media for the user according to the statistic. The media is then scheduled according to the statistic for the user. A user interface is then updated on paper.

For example, claim 9 could conceivably be interpreted to mean that a first person (monitoring system) receives a notification on paper via a network of individuals (communication network) a request for data, the request comprising parameters. The first person calculates a statistic related to the request and then selects additional media for the user according to the statistic. The media is then scheduled according to the

statistic for user consumption. The statistic is then communicated to a second person (provider) via the network of individuals.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-23 and 25-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan et al. (US 2003/0018745 hereinafter McGowan) in view of Khusheim (US 2003/0221191 hereinafter Khusheim) and in further view of Herz (US Pat No. 6,029,195 hereinafter Herz).

Regarding claim 1, McGowan discloses “a method supporting communication of activity information to enable media programming, the method comprising:

receiving, via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising information related to the request;” ([0008]-[0009], [0026], Fig. 1, item 50 a home user interacts with broadcast content via various requests such as for VOD content, where information pertaining to the requests are transmitted to item 55 a usage and experience database)

“calculating at least one statistic, using the information related to the request;” ([0026], Figs. 1, item 55 statistical information based on a user’s requests)

“automatically selecting additional media for consumption by the user according to the at least one statistic;” ([0033], Fig. 3 item 155 and 155a identifying additional media based on statistical information of user requests from item 55)

“scheduling the selected media according to the at least one statistic, for consumption by the user via the communication network; and” ([0033]-[0034], [0011], Fig. 3 item 160 a schedule of additional media is created to be transmitted to the user as a virtual channel available for the user’s consumption)

“updating a user interface with the scheduled selected media” ([0048], Fig. 7, a virtual channel user interface is provided based upon determination of the schedule).

But, McGowan does not explicitly state the user designing which monitoring system receives the notification along with user selected parameter information which further indicates a type of allowable use at the monitoring system.

However, Khusheim teaches a monitoring system (Fig. 1 item 130) controlling the selecting and scheduling of additional media according to calculated statistics from received user information (abstract), where the user designates whether information will be shared with the monitoring system and how much information will be shared ([0113]). Yet, Khusheim does not explicitly state the shared information including parameter information which is used to indicated the allowable use of the shared information; however, Herz discloses selective presentation of media to a user determined by a

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monitoring system according to calculated statistics based on received information from users (abstract), where a user controls the ability of third parties to access the user information (col. 52 lines 33-67)).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of McGowan for receiving requests with corresponding information and based on the requests selecting and scheduling media for a user with the teachings of Khusheim for providing a user the ability to designate whether user information will be shared and how much information will be shared along with the teachings of Herz for providing a user the ability to designate which third parties have access to user information. One would have been motivated to provide the user with control of who receives the user information and how it is used for the purpose of ensuring a user desirable privacy level (see Khusheim [0113] and Herz abstract).

Regarding claim 2, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein the information comprises one or more of an Internet protocol (IP) address, a media access control (MAC) address, an electronic serial number (ESN), a title, a subject, a time period, a genre, an artist, a media channel type, a mode, a language, and/or a user identifier” ([0026], Fig. 3 item 55).

Regarding claim 3, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure” ([0003], Figs. 5-6).

Regarding claim 4, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein the communication network is the Internet” ([0008], [0048]).

Regarding claim 5, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data” ([0028], [0044]).

Regarding claim 6, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data” ([0044]).

Regarding claim 7, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein one or more of the calculating, selecting, scheduling, and/or updating is performed on a periodic basis” ([0022], [0026], [0047]).

Regarding claim 8, McGowan, Khusheim, and Herz disclose “the method of claim 1 wherein the at least one statistic is a ranking of the relative frequency of consumption of media” (Fig. 3 item 55).

Regarding claim 9, McGowan discloses “a method supporting communication of activity information to enable media programming, the method comprising:

receiving, via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising information related to the request;” ([0008]-[0009], [0026], Fig. 1, item 50 a home user interacts with broadcast content via various requests such as for VOD content, where information pertaining to the requests are transmitted to item 55 a usage and experience database)

“calculating at least one statistic, using the information related to the request;” ([0026], Figs. 1, item 55 statistical information based on a user’s requests)

“automatically selecting additional media for consumption by the user according to the at least one statistic;” ([0033], Fig. 3 item 155 and 155a identifying additional media based on statistical information of user requests from item 55)

scheduling the selected media according to the at least one statistic for consumption by the user; and” ([0033]-[0034], [0011], Fig. 3 item 160 a schedule of

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additional media is created to be transmitted to the user as a virtual channel available for the user's consumption)

“communicating one or both of the selected media and/or the at least one statistic to a provider of the media, via the communication network” ([0027], [0047]).

But, McGowan does not explicitly state the user designing which monitoring system receives the notification along with user selected parameter information which further indicates a type of allowable use at the monitoring system.

However, Khusheim teaches a monitoring system (Fig. 1 item 130) controlling the selecting and scheduling of additional media according to calculated statistics from received user information (abstract), where the user designates whether information will be shared with the monitoring system and how much information will be shared ([0113]). Yet, Khusheim does not explicitly stated the shared information including parameter information which is used to indicated the allowable use of the shared information; however, Herz discloses selective presentation of media to a user determined by a monitoring system according to calculated statistics based on received information from users (abstract), where a user controls the ability of third parties to access the user information (col. 52 lines 33-67)).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of McGowan for receiving requests with corresponding information and based on the requests selecting and scheduling media for a user with the teachings of Khusheim for providing a user the ability to

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designate whether user information will be shared and how much information will be shared along with the teachings of Herz for providing a user the ability to designate which third parties have access to user information. One would have been motivated to provide the user with control of who receives the user information and how it is used for the purpose of ensuring a user desirable privacy level (see Khusheim [0113] and Herz abstract).

Regarding claim 10, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein the information comprises one or more of an Internet protocol (IP) address, a media access control (MAC) address, an electronic serial number (ESN), a title, a subject, a time period, a genre, an artist, a media channel type, a mode, a language, and/or a user identifier” ([0026], Fig. 3 item 55).

Regarding claim 11, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure” ([0003], Figs. 5-6).

Regarding claim 12, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein the communication network is the Internet” ([0008], [0048]).

Regarding claim 13, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data” ([0028], [0044]).

Regarding claim 14, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data” ([0044]).

Regarding claim 15, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein one or more of the calculating, selecting, scheduling, and/or updating is performed on a periodic basis” ([0022], [0026], [0047]).

Regarding claim 16, McGowan, Khusheim, and Herz disclose “the method of claim 9 wherein the at least one statistic is a ranking of the relative frequency of consumption of media” (Fig. 3 item 55).

Regarding claim 17, McGowan discloses “a system supporting communication of activity information to enable media programming, the system comprising:

a television display;

a storage for storing media, the storage having an associated network address;
a user interface accessible via the television display, the user interface supporting the selection of media for consumption;”

set top box circuitry communicatively coupling the storage to a communication network to support consumption of the selected media; and” ([0044]-[0045], Fig. 5)

“server software that receives, via the communication network, a notification comprising at least one of the associated network address and information related to the media selected for consumption by the user,” (Fig. 1 item 55 via back channel) “and responds by calculating at least one statistic automatically selecting,” (Fig. 3 item 55) “identifying additional media for consumption by the user according to the at least one statistic,” (Fig. 3 items 155-155a) “and scheduling availability of the selected media according to the at least one statistic” ([0033]-[0034], Fig. 3 items 160-160a).

But, McGowan does not explicitly state the user designing which monitoring system receives the notification along with user selected parameter information which further indicates a type of allowable use at the monitoring system.

However, Khusheim teaches a monitoring system (Fig. 1 item 130) controlling the selecting and scheduling of additional media according to calculated statistics from received user information (abstract), where the user designates whether information will be shared with the monitoring system and how much information will be shared ([0113]). Yet, Khusheim does not explicitly stated the shared information including parameter information which is used to indicated the allowable use of the shared information;

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however, Herz discloses selective presentation of media to a user determined by a monitoring system according to calculated statistics based on received information from users (abstract), where a user controls the ability of third parties to access the user information (col. 52 lines 33-67)).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of McGowan for receiving requests with corresponding information and based on the requests selecting and scheduling media for a user with the teachings of Khusheim for providing a user the ability to designate whether user information will be shared and how much information will be shared along with the teachings of Herz for providing a user the ability to designate which third parties have access to user information. One would have been motivated to provide the user with control of who receives the user information and how it is used for the purpose of ensuring a user desirable privacy level (see Khusheim [0113] and Herz abstract).

Regarding claim 18, McGowan, Khusheim, and Herz disclose “the system of claim 17 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data” ([0028], [0044]).

Regarding claim 19, McGowan, Khusheim, and Herz disclose “the system of claim 17 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data” ([0044]).

Regarding claim 20, McGowan, Khusheim, and Herz disclose “the system of claim 17 wherein the information comprises one or more of an Internet protocol (IP) address, a media access control (MAC) address, an electronic serial number (ESN), a title, a subject, a time period, a genre, an artist, a media channel type, a mode, a language, and/or a user identifier” ([0026], Fig. 3 item 55).

Regarding claim 21, McGowan, Khusheim, and Herz disclose “the system of claim 17 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure” ([0003], Figs. 5-6).

Regarding claim 22, McGowan, Khusheim, and Herz disclose “the system of claim 17 wherein the information comprises one or more of a title, a subject, a time period, a genre, an artist, a media channel type, a mode, a language, and/or a user identifier” ([0026], Fig. 3 item 55).

Regarding claim 23, McGowan, Khusheim, and Herz disclose “the method of claim 17 wherein the at least one statistic is a ranking of the relative frequency of consumption of media” (Fig. 3 item 55).

Regarding claim 25, McGowan, Khusheim, and Herz disclose “the method of claim 17 wherein one or more of the calculating, identifying, scheduling, and/or updating is performed on a periodic basis” ([0022], [0026], [0047]).

Regarding claim 26, McGowan, Khusheim, and Herz disclose “the system of claim 17 wherein the server software shares, with a third party, the at least one statistic” ([0027]).

Regarding claim 27, McGowan discloses “a system supporting communication of activity information to enable media programming, the system comprising:

set top box circuitry communicatively coupled to a communication network to support consumption of media; and” ([0044]-[0045], Fig. 5)

“software that receives, via the communication network, a notification of a user request for consumption of media,” (Fig. 1 item 55 via back channel) “wherein the notification comprises information related to the request, wherein the software also calculates a statistic using the information related to the request,” (Fig. 3 item 55) “automatically selects additional media for consumption by the user according to the

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statistic,” (Fig. 3 items 155-155a) “and schedules availability of the selected media according to the statistic” ([0033]-[0034], Fig. 3 items 160-160a).

But, McGowan does not explicitly state the user designing which monitoring system receives the notification along with user selected parameter information which further indicates a type of allowable use at the monitoring system.

However, Khusheim teaches a monitoring system (Fig. 1 item 130) controlling the selecting and scheduling of additional media according to calculated statistics from received user information (abstract), where the user designates whether information will be shared with the monitoring system and how much information will be shared ([0113]). Yet, Khusheim does not explicitly stated the shared information including parameter information which is used to indicated the allowable use of the shared information; however, Herz discloses selective presentation of media to a user determined by a monitoring system according to calculated statistics based on received information from users (abstract), where a user controls the ability of third parties to access the user information (col. 52 lines 33-67)).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of McGowan for receiving requests with corresponding information and based on the requests selecting and scheduling media for a user with the teachings of Khusheim for providing a user the ability to designate whether user information will be shared and how much information will be shared along with the teachings of Herz for providing a user the ability to designate which third parties have access to user information. One would have been motivated to

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provide the user with control of who receives the user information and how it is used for the purpose of ensuring a user desirable privacy level (see Khusheim [0113] and Herz abstract).

Regarding claim 28, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data” ([0028], [0044]).

Regarding claim 29, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data” ([0044]).

Regarding claim 30, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure” ([0003], Figs. 5-6).

Regarding claim 31, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein the information comprises one or more of a title, a subject, a time

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period, a genre, an artist, a media channel type, a mode, a language, and/or a user identifier” ([0026], Fig. 3 item 55).

Regarding claim 32, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein the at least one statistic is a ranking of the relative frequency of consumption of media” (Fig. 3 item 55).

Regarding claim 33, McGowan, Khusheim, and Herz disclose “the method of claim 27 wherein one or more of the calculating, identifying, scheduling, and/or updating is performed on a periodic basis” ([0022], [0026], [0047]).

Regarding claim 34, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein the server software shares, with a third party, the at least one statistic” ([0027]).

Regarding claim 35, McGowan, Khusheim, and Herz disclose “the system of claim 27 wherein the software comprises server software” ([0032]-[0034]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUMAIYA A. CHOWDHURY whose telephone number is (571)272-8567. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

/Sumaiya A Chowdhury/
Examiner, Art Unit 2421